

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H103825**

RUSTY A. BOYD, EMPLOYEE	CLAIMANT
CITY OF SPRINGDALE, EMPLOYER	RESPONDENT
ARKANSAS MUNICIPAL LEAGUE, INSURANCE CARRIER	RESPONDENT

OPINION FILED **JANUARY 7, 2022**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF, in Springdale, Washington County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by JARROD S. PARRISH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 9, 2021, the above captioned claim came before the Workers' Compensation Commission in Springdale, Arkansas, for a hearing. A prehearing conference was conducted on October 28, 2021, and a Prehearing Order filed that same date. A copy of the prehearing order, with modifications, has been marked as Commission's Exhibit No. 1 and there was no objection to it being made part of the record.

The parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this case.
2. The employee/employer/carrier relationship existed on April 3, 2021.
3. The respondents have controverted the claim in its entirety.
4. The compensation rates are \$700.00 for temporary total disability and \$525.00 for permanent partial disability.

The issues to be litigated are limited to the following:

1. Whether claimant sustained a compensable injury.
2. If compensable, whether claimant is entitled to medical benefits.

The claimant contends that “on April 3, 2021, he was starting to do light sprint pushing off his right foot and felt a tear in plantar on right foot.”

The respondents contend that “claimant was not performing employment related services at the time of his injury. He was at home getting ready to jog. Respondents also contend that there are no objective findings to support a work-related injury in the event it is determined that claimant was performing employment related services. Lastly, respondents contend the medical documentation does not support entitlement to indemnity benefits in the event compensability is found.

From a review of the record, including the medical reports and documents introduced, and having heard claimant’s testimony and observed his demeanor, the following decision is rendered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a prehearing conference conducted on October 28, 2021 and contained in the Prehearing Order filed that same date are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his right foot on April 3, 2021.

FACTUAL BACKGROUND

There were two prehearing conference calls in this matter. The first was on September 16, 2021, and is referred to in the Prehearing Order of October 28, 2021, but no order was entered following that call. The second call took place on October 28, 2021, after which the Prehearing Order that governs this case was entered.

HEARING TESTIMONY

Claimant was the sole witness called by the parties. He testified that he had been employed with the Springdale Police department since 2001. Claimant said he initially injured himself taking a physical fitness test, called the LEPAT. He had a near-total tear of one of the plantar fascia on the bottom of his right foot. That injury was covered by workers' compensation. Claimant had been on light duty for several months and was released to full duty March 29. (TR.8) Upon being told that he would have to take the LEPAT again, claimant began working out on his own on April 3, 2021, when he pushed off on his right foot and felt a "familiar tear on the bottom of my right foot as I felt when I injured it the first time in 2020." Claimant stated that he was off duty at home preparing. Claimant testified he did not go to the doctor because he misunderstood what all was going on there and "I also had already been through the process, knew the exercises to do to rehabilitate the injury." (TR.9) Claimant returned to Dr. Bright, who gave him two or three shots in the bottom of his foot and then wrote a one page note that was admitted into evidence as claimant's sole exhibit over the objection of the respondent. Respondent's objection will be addressed in the section discussing the medical records.

On cross examination, claimant testified that the incident happened at his apartment complex on a Saturday morning when he was not scheduled to work. Claimant conceded that he was not on duty in any way at that point. (TR.10) Claimant was not wearing a department issued uniform or workout outfit. Claimant was not following a workout designed or prescribed by the department. The sprint that claimant said he was about to do was not geared toward any specific part of the test but toward building up his cardiovascular endurance. Claimant was not being paid by the department at the time of the accident, was free to go and do as he pleased at that point. The workout was not mandatory or in any way required by the department. (TR.11) Claimant testified that he sometimes did the workout to try to lose weight. (TR.12)

Claimant stated he went to Dr. Bright in October after the first prehearing conference call, because during that conversation, he was informed that without any medical records, he could not successfully pursue a claim. Claimant said that the purpose for bringing the current action was to have a declaration that working out at home is a “work-related activity” if it is for the purpose of passing a mandatory physical fitness test. Claimant wanted a department-wide change where those workouts will be compensated. (TR-13) Claimant’s prior tear was on December 16, 2020; it was diagnosed by an MRI and there was no surgery to correct the condition. Claimant did not have any diagnostic test to show that the condition healed before the April 3 incident. The sensation he felt on April 3 was in the same location of his foot as the prior incident of December 2020. (TR.14) Claimant believes that the April 3, 2021, incident was related to the December 2020 tearing. (TR.15)

Claimant's visit with Dr. Bright was placed on his private health insurance but claimant has a high deductible HSA plan, so he had to pay for that visit because he had not reached his deductible. (TR.17) Claimant said he had not missed any work due to his April 3, 2021 injury. At the time of the hearing, claimant was working full-time as a patrolman, and had continued to work in that capacity since that time he was released by Dr. Pleimann on April 23, 2021 (TR.18)

I found the claimant to be an extremely credible witness; I had no reason to doubt anything he said in the hearing.

REVIEW OF THE MEDICAL RECORDS

Claimant submitted only one page of medical records, dated October 1, 2021, "To Whom it May Concern" note from Dr. Dean Bright. Respondent objected to the introduction of this document because claimant had not provided it to respondent pursuant to the court's Prehearing Order. The document was in the Worker's Compensation Commission's file, having been received on October 4, 2021. Claimant conceded that he had not forwarded to counsel for respondent, as he thought sending it to the Commission was sufficient. After determining claimant believed that he had complied with the prehearing order, I ruled that I was going to admit the document. I then offered respondent an opportunity to have the matter continued to prepare its defense in light of the contents of the document, but respondent's attorney declined a continuance, citing the additional expense for his client if the matter were continued.

The record from Dr. Bright says simply "clinical evidence today reveals a palpable knot to the site of his original plantar fascia tear right foot which was scar tissue. Treatment this date consists of injection therapy, oral anti-inflammatories, and PF-stretch boot. I do believe this is a result from his original plantar fascia tear."

I reviewed the records submitted by respondent, but under the facts of this case, a detailed discussion of such is not necessary to decide this matter. Claimant has a history of being overweight, and he had been on medication to assist him to lose weight. Of most relevance were records from claimant's medical providers following the December 2020 injury, as well as the form from Dr. Jason Pleimann on April 23, 2021 which gave claimant a medical clearance to perform the physical abilities test given by the Springdale Police Department.

ADJUDICATION

To receive workers' compensation benefits, a claimant must establish (1) that the injury arose out of and in the course of the employment, (2) that the injury caused internal or external harm to the body that required medical services, (3) that there is medical evidence supported by objective findings establishing the injury, and (4) that the injury was caused by a specific incident and identifiable by the time and place of the occurrence. Ark. Code Ann. § 11-9-102(4) The claimant bears the burden of proving a compensable injury by a preponderance of the credible evidence. See Ark. Code Ann § 11-9-102(4)(E)(i). Compensation must be denied if the claimant fails to prove any one of these requirements by a preponderance of the evidence, *Rippe v. Logging*, 100 Ark. App. 227, 266 S.W.3d 217 (2007), *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). In this case, claimant identified a specific incident as the cause of the injury to his right foot, but he failed to prove by a preponderance of the evidence two of the other required elements.

As to whether the injury arose out of and in the course of employment, there have been dozens of cases decided by the Full Commission and by the appellate courts on what is to be considered "out of and in the course of employment." A recent decision from the Arkansas Court of Appeals provides a good summation of the law in this area:

“In Arkansas workers'-compensation law, in order for an accidental injury to be compensable, it must arise out of and in the course of employment. An employee is performing employment services when he or she is doing something that is generally required by his or her employer. We use the same test to determine whether an employee is performing employment services as we do when determining whether an employee is acting within the course and scope of employment. The test is whether the injury occurred within the time and space boundaries of the employment when the employee was carrying out the employer's purpose or advancing the employer's interest, either directly or indirectly. Moreover, whether an employee was performing employment services within the course of employment depends on the particular facts and circumstances of each case.” *Pratt v. Landers McLarty Bentonville*, 2021 Ark. App. 184.

Neither party provided me with any information, such as an employee handbook, outlining what duties a patrolman for the City of Springdale was expected to perform. However, I am confident that patrolmen are not carrying out their assignments when they are not in uniform and are “off the clock.” I am unable to find that preparing to run sprints at his apartment when not on duty comes “within the time and space boundaries of the employment” that is necessary for workers’ compensation benefits to be awarded.

I considered the case of *El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430, (1987) in which a patrolman was awarded benefits due to an injury that occurred when he was off-duty and outside a nightclub. However, under the facts of that case, the officer was making an arrest of a disruptive subject. The Court of Appeals explained thusly:

“Moreover, El Dorado Police Regulations state that "officers off duty shall perform necessary police service in the City of El Dorado whenever they are aware of a serious criminal offense or a present threat to life." As we noted in *City of Sherwood v. Lowe*, 4 Ark. App. 161, 628 S.W.2d 610 (1982), it is the nature of police work that an officer might at any time be called into duty, either by his superiors or by what he observes. In addition, we noted in *Lowe* that the existence of a benefit to the employer was an important element in the analysis to determine whether an injury occurred in the course of the claimant's employment. *Id.*

By contrast, claimant was not called into duty, either by his department or by something he observed.

I am not unsympathetic with claimant's position that physical fitness training done at home to pass the required physical abilities test mandated by a police department to be employed as a patrolman should be considered "in the course of the employment." However, I am not free to disregard the plain language of the statutes enacted by the Arkansas legislature and decades of case law from the appellate courts in order to rule in his favor in this point.

As for the second element, claimant testified he did not seek medical treatment until he was informed that without having sought some sort of medical services, he did not have a viable workers' compensation claim. Claimant's medical exhibit was from a visit to Dr. Bright on October 1, 2021, over five months from the time he was released to full duty by Dr. Pliemann on April 23, 2021. I cannot find that the foot injury claimant testified happened on April 3, 2021 "caused internal or external harm to the body that required medical services" when claimant did not see a doctor for that injury until October 1, 2021. I believe claimant's testimony on this point—that he knew how to treat his foot injury without seeing a doctor—is typical of what many people do when hurt or ill: deal with it without seeing a doctor. However, for a workers' compensation claim to be viable, an injury must have been of the sort that medical treatment was required; by claimant's testimony, it wasn't.

As I find claimant failed to prove he was injured while performing employment services on April 3, 2021 and further failed to show the injury caused harm that required medical services, I need not address respondent's additional contentions as to whether there were objective findings to support a work-related injury or if the medical documentation supports entitlement to indemnity benefits.

ORDER

Claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his right foot on April 3, 2021. Therefore, his claim for compensation benefits is hereby denied and dismissed.

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$326.25.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE